

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MANUEL ARIAS and DANIEL MEJIA,

Plaintiffs,

-against-

A & J DELI FISH CORP. *doing business as*
Aurora Fish Grill, and JULIO CASTILLO,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/20/20

19-CV-4042 (ALC) (BCM)

**ORDER (1) GRANTING MOTION TO
WITHDRAW AND (2) SCHEDULING
STATUS CONFERENCE**

BARBARA MOSES, United States Magistrate Judge.

By letter-motion dated January 17, 2020 (Dkt. No. 28), attorneys Andrea Marie Moss and Sima Asad Ali, of Ali Law Group PC, sought (1) to withdraw as counsel for defendants A & J Deli Fish Corp., doing business as Aurora Fish Grill, and Julio Castillo (collectively, Defendants), a request to which Defendants consented; (2) permission to submit a formal motion for leave to withdraw, with an accompanying declaration and memorandum of law, to the Court under seal, "with copies served on Defendants but not any other parties, in order to preserve the confidentiality of the attorney-client relationship"; and (3) a stay of discovery pending resolution of the withdrawal motion. (*Id.*)

By Order dated January 17, 2020 (Dkt. No. 29), the Court permitted attorneys Moss and Ali to submit their motion to withdraw and supporting papers to chambers; instructed plaintiffs to file their objections to the motion, if any, no later than January 24, 2020; and directed Defendants to mail their responses to the motion, if any, to chambers no later than January 31, 2020. The Court also stayed discovery pending resolution of the motion to withdraw. On January 24, 2020, attorneys Moss and Ali submitted their motion with supporting papers to chambers, and promptly served those papers on Defendants. (Dkt. Nos. 31, 32.) In addition to an order granting their application to withdraw, attorneys Moss and Ali "request[] an Order fixing [their] attorneys' retaining and charging lien for counsel fees and disbursements to date."

Motion to Withdraw

No opposition to the motion having been received, and good cause for withdrawal having been shown, it is hereby ORDERED that the motion of attorneys Moss and Ali for leave to withdraw is GRANTED.

However, withdrawing counsel are not entitled to a charging lien pursuant to N.Y. Jud. Law § 475. A charging lien is simply "a security interest in the favorable result of litigation, giving the attorney equitable ownership interest in the client's cause of action." *Antonmarchi v. Consol. Edison Co. of New York*, 678 F. Supp. 2d 235, 240 (S.D.N.Y. 2010) (quoting *Chadbourne & Parke, LLP v. AB Recur Finans*, 18 A.D.3d 222, 223, 794 N.Y.S.2d 349, 350 (1st Dep't 2005)). Since counsel's former clients are the defendants in this FLSA action, and since they have not alleged any counterclaims, they have no cause of action in which such a lien can be granted. *Rivkin v. A.J. Hollander & Co.*, 1996 WL 633217, at *4 (S.D.N.Y. Nov. 1, 1996) ("unless the defendant has asserted a counterclaim," defense counsel is not entitled to a charging

lien). Nor are withdrawing counsel entitled to a retaining lien where, as here, the case arises under a federal statute with a fee shifting provision. *See Order, Wilson v. Pasquale's Damarino's, Inc.*, No. 1:10-cv-2709-PGG-RWL (S.D.N.Y. June 20, 2011), ECF No. 108 (denying withdrawing defense counsel's request for a retaining lien in an FLSA action "because such liens are not available when a case arises under a federal statute containing a fee shifting-provision," and collecting cases).

Since defendant A & J Deli Fish Corp. is not a natural person, it must defend this action through counsel. Consequently, it is further ORDERED that A & J Deli Fish Corp.'s new counsel shall file a notice of appearance no later than **March 20, 2020**. If defendant Julio Castillo wishes to proceed through counsel, his new counsel shall also file a notice of appearance no later than **March 20, 2020**. If Julio Castillo wishes to proceed *pro se*, he must file a Notice of Pro Se Appearance with the Court's Pro Se Intake Office, located at 500 Pearl Street, Room 200, New York, NY 10007, no later than **March 20, 2020**. **The Notice is available here: <http://www.nysd.uscourts.gov/forms.php>. Information about appearing *pro se* is available here: <https://nysd.uscourts.gov/prose>.**

Status Conference

Judge Moses will conduct a **status conference** in this action on **March 24, 2020, at 11:30 a.m.**, in Courtroom 20A, 500 Pearl Street, New York, NY 10007. **All parties, including defendant Julio Castillo (whether *pro se* or through counsel), must appear at the conference.**

It is further ORDERED that attorneys Moss and Ali shall promptly serve a copy of this Order on their former clients, by email and U.S. Mail, and file proof of such service on ECF. The Clerk of Court will be directed to terminate attorneys Moss and Ali as counsel of record in this action once the proof of service has been filed.

Dated: New York, New York
February 20, 2020

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge